

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CUNG TRAN)	
Claimant)	
VS.)	
)	
IBP, INC.)	Docket No. 231,510
Respondent)	
Self-Insured)	

ORDER

Respondent appealed Administrative Law Judge Brad E. Avery's September 29, 1998, preliminary hearing Order.

ISSUES

The Administrative Law Judge found claimant proved he suffered an accidental injury arising out of and in the course of his employment with respondent. He further found claimant gave respondent timely notice of the accident. The Administrative Law Judge denied the claimant's request for temporary total disability compensation and medical treatment. However, the Administrative Law Judge ordered an independent medical examination of claimant pursuant to K.S.A. 44-516 for the purpose of determining whether his right index finger problem is work related.

The respondent contends claimant failed to prove his right index finger symptoms are related to his work activities. Further, the respondent argues claimant did not prove he gave the respondent timely notice of the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both issues raised by the respondent are jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a.

Claimant is a 72 year old non-English speaking Vietnamese male that started working for the respondent on January 20, 1995. Claimant worked in Department 951

packaging meat. This job required the claimant to lift the package with his left hand and to insert the meat with his right hand on a repetitive basis.

Claimant testified he started having pain and discomfort in his right index finger in July of 1996. Claimant testified he notified both his supervisor and respondent's nurse of his right hand problems. Claimant went on his own to see his family doctor, Thomas Manh Tran, M.D., in Wichita, Kansas. Dr. Tran diagnosed claimant with both hypertension and gout. At Dr. Tran's request, claimant was placed on a medical leave of absence on January 5, 1998. Respondent eventually terminated claimant on March 7, 1998. At the time of termination, claimant notified respondent's nurse that his right hand problems were related to his work activities. The nurse then referred claimant to the company physician, J. Robert Hutchinson, M.D., in Emporia, Kansas. Dr. Hutchinson's records were admitted into evidence and established he saw claimant on two occasions, March 12, 1998, and March 19, 1998. The doctor's assessment was gout, right 2nd MP joint. However, the doctor indicated, in his March 12, 1998, medical note, "I doubt that this gout has been caused from his job, however, it may be exacerbated with movement of the right 2nd MP joint."

Claimant's attorney sent claimant to Michael P. Estivo, D.O., in Wichita, Kansas. Dr. Estivo saw claimant on June 4, 1998. The doctor's impression was subcutaneous lesion 2nd digit MP joint dorsum right hand. Dr. Estivo felt the right hand lesion was caused by claimant's work activities.

The Appeals Board concludes the Administrative Law Judge's preliminary hearing Order should be affirmed. The Appeals Board finds the preliminary hearing record by the narrowest of margins supports the finding that claimant's injured right index finger was either caused or aggravated by his work and his uncontradicted testimony establishes he told his immediate supervisor he had pain and swelling in his right hand while performing his work activities.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's preliminary hearing Order dated September 29, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Darla J. Lilley, Wichita, KS
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Administrative Law Judge

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Philip S. Harness, Director